

**TAB 9**

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 04-11939JGD

MICHAEL J. WHALON,  
Plaintiff,

v.

CHRISTY'S OF CAPE COD, LLC,  
Defendant.

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)

CONTINUED DEPOSITION of **MICHAEL J. WHALON**, a witness  
called on behalf of the Defendant, taken pursuant to  
the applicable provisions of the Massachusetts Rules  
of Civil procedure, before John F. Kielty, a Notary  
Public in and for the Commonwealth of Massachusetts,  
at the Law Offices of Murphy, Hesse, Toomey &  
Lehane, 300 Crown Colony Drive, Quincy,  
Massachusetts, on Tuesday, October 11, 2005,  
commencing at 10:27 a.m.

**JOHN F. KIELTY**  
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Plymouth, Massachusetts 02360  
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1                   Mr. Whalon, have you done anything to  
2                   prepare for your attendance here today?

3           A.           Not that I'm aware of, no.

4           Q.           Well, would you be aware if you had done  
5                   something to prepare to come here today?

6           A.           I believe I would.

7           Q.           So have you done anything to prepare to come  
8                   here today?

9           A.           No.

10          Q.           Thank you.

11                    Could you tell me, Mr. Whalon, do you suffer  
12                   from any medical conditions?

13          A.           A little more specific.

14          Q.           Do you understand what a "medical condition"  
15                   is?

16          A.           Yeah.

17          Q.           Do you suffer from any medical --

18          A.           I have bipolar.

19          Q.           -- conditions? You are bipolar?

20          A.           Uh-huh. (Indicates affirmatively).

21          Q.           Do you suffer from any other medical  
22                   conditions?

23          A.           Not that I recall.

24          Q.           Is there any reason why you wouldn't recall

1 if you suffered from a medical condition?

2 A. Again, I have the bipolar.

3 Q. Just so the record is clear, Mr. Whalon, are  
4 you taking any medication at this time?

5 A. Yes, I believe I went over this with you.

6 Q. Well, my question is very specific. In  
7 other words, this day, as you sit here today, --

8 A. Yeah.

9 Q. -- have you taken medication?

10 A. Yes.

11 Q. You have. What medication have you taken?

12 A. Depakote, Lamictal, Lithium, Klonopin,  
13 Zyprexis.

14 Q. And have you taken all of these medications  
15 today or yesterday?

16 A. Yesterday.

17 Q. And you are receiving all of these  
18 medications under a physician's care?

19 A. Yes.

20 Q. Are you taking any other medications at the  
21 present time, other than the ones you just listed?

22 A. Not at this time.

23 Q. Have you taken any other drugs in the past  
24 24 hours?

1 Now, you have identified bipolar as a  
2 medical condition that you suffer?

3 A. Right.

4 Q. Do you suffer any other medical conditions,  
5 other than bipolar? Is it properly called bipolar  
6 disorder?

7 A. Bipolar, manic depression.

8 Q. And that is two names for one condition?

9 MR. SCOTT: Objection.

10 BY MR. COLOMB:

11 Q. As you understand it?

12 A. I can't answer for that.

13 Q. Are you both bipolar and manic depressive?

14 A. Yes.

15 MR. SCOTT: Objection.

16 You can answer.

17 THE REPORTER: Excuse me? Your answer.

18 THE WITNESS: Yes.

19 MR. SCOTT: You can answer.

20 THE REPORTER: Thank you.

21 MR. COLOMB: Actually, just so I am clear, I  
22 think it might benefit if you stated the basis for  
23 that.

24 MR. SCOTT: You are --

1 MR. COLOMB: I would ask if it was leading.  
2 I just want to be clear, so I understand.

3 MR. SCOTT: Sure, you are asking him for a  
4 medical conclusion that he is not qualified to give.  
5 You can ask him if he has been told by any physician  
6 as to any conditions that he may suffer from, but  
7 when you are asking him do you suffer from this or  
8 that, I think you are asking for a medical  
9 conclusion to the extent that your questions are  
10 getting more medically oriented in the sense of  
11 asking him whether or not bipolar and manic  
12 depression is one disorder or two disorders. I  
13 think that is getting beyond what he has been told  
14 by his doctor and asking him to actually render a  
15 medical opinion, which I don't think he is capable  
16 of doing.

17 MR. COLOMB: Thank you.

18 BY MR. COLOMB:

19 Q. Has a physician told you that you suffer  
20 from bipolar disorder?

21 A. Yes.

22 Q. Has a physician ever told you that you  
23 suffer from a manic depressive condition?

24 A. Yes.

1 Q. Has a physician ever told you that you  
2 suffer from any other medical conditions?

3 A. I don't recall.

4 Q. As you sit here today, are you aware of any  
5 other medical conditions that you suffer from?

6 A. No.

7 MR. SCOTT: Just to clarify, Tom, you are  
8 referring to not only mental or emotional conditions  
9 but also, physical conditions?

10 MR. COLOMB: That is correct.

11 THE WITNESS: Okay.

12 MR. SCOTT: Do you understand?

13 THE WITNESS: Now, I do.

14 BY MR. COLOMB:

15 Q. Let me ask you the question again then with  
16 that clarification. Are there other medical  
17 conditions that you are aware of that you suffer  
18 from other than bipolar disorder, manic depression?

19 A. Yes, I have a back problem.

20 Q. And are there any other medical conditions?

21 A. Migraines.

22 Q. Any other medical conditions?

23 A. No.

24 MR. COLOMB: Do you want a moment?

1 THE WITNESS: Also, the foot.

2 BY MR. COLOMB:

3 Q. The foot?

4 A. Uh-huh. (Indicates affirmatively).

5 Q. What is the nature of your medical condition  
6 involving your foot?

7 A. I broke it in three places.

8 Q. When did you begin suffering from bipolar  
9 disorder?

10 A. Let's see, I started seeing a therapist in  
11 2000.

12 Q. What caused you to go to a therapist in  
13 2000?

14 A. Just wasn't feeling myself.

15 Q. In what way?

16 A. Just wasn't feeling myself.

17 Q. Can you identify any symptoms that you were  
18 experiencing?

19 A. Racing thoughts, just --

20 Q. Any symptoms other than racing thoughts?

21 A. There's a few, just depression.

22 Q. You said, there are a few. Any others?

23 A. I don't recall right now.

24 Q. Prior to this visit to a therapist in 2000,



1 had you ever sought medical care for racing  
2 thoughts?

3 A. I don't recall.

4 Q. Prior to seeing this therapist in 2000, had  
5 you ever sought medical care for depression?

6 A. I don't recall.

7 Q. Prior to seeing this therapist in 2000, had  
8 you ever sought medical care for any mental health  
9 issues?

10 A. I don't recall.

11 Q. You don't recall if before the year 2000 you  
12 ever sought medical attention --

13 A. I don't recall.

14 Q. -- for mental health issues?

15 A. I don't recall.

16 Q. Is there anything that would help you to  
17 recall?

18 A. Again, I don't recall.

19 Q. Prior to the year 2000, did you ever see a  
20 therapist for any reason whatsoever?

21 A. For my back.

22 Q. Are we talking physical therapist?

23 A. That was a therapist.

24 Q. Did that therapist question you regarding

1 of medicine Dr. Grogan practices?

2 A. He's just a general guy, couldn't answer  
3 that.

4 Q. Do you know if Dr. Grogan has any training  
5 in mental health issues?

6 A. I can't answer for him.

7 Q. No, I am not asking you to answer for him.  
8 I am just asking if you know.

9 A. I don't know.

10 Q. Do you recall when in 2000 you started  
11 seeing Anne Kronenberg?

12 A. I'm not sure of the exact date.

13 Q. How did you come to see Anne Kronenberg?

14 A. Through my primary care.

15 Q. So Dr. Grogan referred you to Anne  
16 Kronenberg?

17 A. Right.

18 Q. At the time of this referral, did Dr. Grogan  
19 tell you anything as to why you should see Anne  
20 Kronenberg?

21 A. I was in, like I said, for depression.

22 Q. So do I understand you expressed those  
23 concerns about depression to Dr. Grogan?

24 A. Right.

1 committed here.

2 MR. COLOMB: Fair point.

3 MR. SCOTT: I am not objecting to the  
4 question.

5 MR. COLOMB: Yes. No, I realized after I  
6 said that.

7 BY MR. COLOMB:

8 Q. Have you ever received any other inpatient  
9 care for mental health issues?

10 A. No.

11 Q. To your knowledge, have you ever been  
12 treated for any mental health conditions, other than  
13 manic depression or bipolar disorder?

14 A. I don't -- I don't recall it.

15 Q. Has any healthcare worker ever told you that  
16 you were being treated for any condition, other than  
17 manic depression or bipolar disorder?

18 A. No.

19 Q. And understanding the issues of your  
20 recollection, I am just asking if you recall. Do  
21 you recall ever receiving treatment for manic  
22 depression or for bipolar disorder prior to 2000?

23 A. No.

24 Q. Does bipolar condition or manic depression

1       affect your life?

2       A.       Yes.

3       Q.       How does it affect your life?

4       A.       A lot that contributes to it.

5       Q.       Can you try to explain to me as best as you  
6       can how it affects your life?

7       A.       Again, if you get depressed, you're on  
8       medication for the rest of your life.

9       Q.       Does bipolar condition, manic depression  
10      limit your life in any way?

11      A.       Yeah.

12      Q.       How does it limit your life?

13      A.       You have a lot of outbursts.

14      Q.       Does it limit your life in other ways?

15      A.       Limits it in jobwise.

16      Q.       Let's talk about that for a moment. How  
17      does it limit your life jobwise?

18      A.       Anything stressful.

19      Q.       Does it limit your life jobwise in any other  
20      way?

21      A.       I can't explain the whole thing.

22      Q.       Well, is there anything you can explain to  
23      help me understand how it limits your life jobwise?

24      A.       Are you familiar with bipolar at all?

1 Q. Yes, I am somewhat. I am certainly not a  
2 healthcare provider.

3 A. All right.

4 Q. But what I am looking for today, Mr.  
5 Whalon, --

6 A. Uh-huh. (Indicates affirmatively).

7 Q. -- is to understand your perspective of how  
8 the condition affects your life?

9 A. Affects it in a big way.

10 Q. Can you give me some examples?

11 A. Affects my marriage.

12 Q. We were talking about jobwise, though, for  
13 the --

14 A. Right.

15 Q. -- moment before moving on to other areas.  
16 How does it affect your ability to work?

17 A. Just right now, it just affects everything  
18 that I do.

19 Q. Let me ask you the question this way. Are  
20 you capable of holding employment?

21 A. At times.

22 Q. But not at all times?

23 A. No.

24 Q. What about bipolar disorder or manic

1 depression makes you at some times unable to hold  
2 employment?

3 A. Again, it's just when you have it, you  
4 just -- racing thoughts, mood swings.

5 Q. Is it your understanding that you have  
6 suffered from bipolar disorder or manic depression  
7 while you worked for Christy's of Cape Cod?

8 A. I can't answer.

9 Q. Were you able to perform the duties of --

10 THE WITNESS: Can I --

11 MR. COLOMB: Do you want to --

12 MR. SCOTT: Can we take a short break?

13 THE WITNESS: Yes, I have to ask you a  
14 question.

15 (Brief recess.)

16 MR. SCOTT: Would you read back the last  
17 question, please?

18 THE REPORTER: Sure.

19 (Requested portion was read by the court  
20 reporter.)

21 BY MR. COLOMB:

22 Q. Were you able to perform the duties of your  
23 job while working at Christy's of Cape Cod?

24 A. At the time.

1 Q. I'm sorry. Did you say, "At the time"?

2 A. At the time.

3 Q. So your bipolar condition and manic  
4 depression did not affect your ability to perform  
5 the duties of your job?

6 MR. SCOTT: Objection.

7 You can answer.

8 THE WITNESS: I don't recall.

9 BY MR. COLOMB:

10 Q. I think I am actually asking for your  
11 opinion. In your opinion, did your bipolar  
12 condition or manic depression affect your ability to  
13 perform your job duties at Christy's?

14 MR. SCOTT: Objection.

15 THE WITNESS: No.

16 BY MR. COLOMB:

17 Q. Does your bipolar condition or manic  
18 depression limit your life in any other way?

19 A. Yes.

20 Q. How does it limit your life?

21 A. Again, jobs.

22 Q. Did the limitation with respect to jobs  
23 occur after 2002?

24 A. Yes.

1 Q. Are you presently limited with respect to  
2 jobs?

3 A. Yes.

4 Q. How are you limited?

5 A. I haven't worked for an actual company for a  
6 long period of time.

7 Q. And how is that related to bipolar condition  
8 or manic depression?

9 A. Again, it's the way bipolar is, mood swings,  
10 outbursts.

11 Q. Are you currently working?

12 A. Currently.

13 Q. And I believe we covered that in --

14 A. Right.

15 Q. -- the first day. But again, just what type  
16 of work are you doing?

17 A. Maintenance work.

18 Q. And does your bipolar or manic depression  
19 limit your ability to perform this maintenance  
20 work?

21 A. At times.

22 Q. How does it limit your ability to perform  
23 the maintenance work?

24 A. Working with other people.



1 Q. Does it limit your ability to work in any  
2 other way?

3 A. Right now, just working with other people.

4 Q. During the first day of deposition, you  
5 identified two jobs that you held in management  
6 trainee positionings, one with CVS, the other with  
7 Cumberland Farms.

8 A. Uh-huh. (Indicates affirmatively).

9 Q. Do you recall those positions?

10 A. Right. Yes.

11 Q. Did your manic depression or bipolar  
12 disorder affect your ability to perform either of  
13 those jobs?

14 A. Yes.

15 Q. Which jobs, or was it both jobs?

16 A. Both.

17 Q. How did the manic depression or bipolar  
18 disorder affect your ability to perform those jobs?

19 A. Again, it was the angry outbursts, and --

20 Q. Angry outbursts?

21 A. Uh-huh. (Indicates affirmatively).

22 Q. Did you have difficulty working with other  
23 people?

24 A. Yeah. Yes.

1 Q. Did it affect your ability to hold those  
2 jobs in any other way?

3 A. Panic attacks.

4 Q. Did it affect your ability to work in those  
5 jobs in any other way?

6 A. I don't recall.

7 Q. When you were working for Christy's of Cape  
8 Cod, did you suffer from angry outbursts?

9 A. I believe I did.

10 Q. When you were working at Christy's of Cape  
11 Cod, did you have difficulty working with other  
12 people?

13 A. Sometimes.

14 Q. And do you attribute these angry outbursts  
15 or difficulties working with people to manic  
16 depression --

17 MR. SCOTT: Objection.

18 BY MR. COLOMB:

19 Q. -- or bipolar disorder?

20 MR. SCOTT: Objection.

21 You can answer.

22 THE WITNESS: Bipolar.

23 BY MR. COLOMB:

24 Q. When you were working at Christy's of Cape

1 Cod, did you suffer panic attacks?

2 A. Yes.

3 Q. How often did you suffer panic attacks?

4 A. I don't recall the exact amount.

5 Q. Do you recall how many panic attacks you  
6 suffered?

7 A. I don't recall the exact amount.

8 Q. Does bipolar disorder or manic depression  
9 affect your ability to work in any other way, and I  
10 am speaking generally now, not about any particular  
11 job?

12 A. Again, just holding down a job.

13 Q. Does it make a difference what type of job  
14 we are talking about?

15 A. No.

16 Q. In addition to difficulty working, does  
17 bipolar disorder or manic depression affect your  
18 life in any other way?

19 A. A lot of -- now, again, --

20 MR. SCOTT: Just to be clear, other than the  
21 other areas he has already testified to?

22 MR. COLOMB: Well, so far we have talked  
23 about work, and a moment ago, he mentioned marriage,  
24 which --

1 MR. SCOTT: Right.

2 MR. COLOMB: -- I will come back to if he  
3 doesn't go back to it himself. I am not aware of  
4 any other areas, though, we have yet discussed.

5 THE WITNESS: Just home life.

6 BY MR. COLOMB:

7 Q. Well, let me ask you this question before we  
8 move into those areas. Does manic depression or  
9 bipolar disorder affect your ability to physically  
10 function in any way?

11 A. Just getting tired from the medications.

12 Q. Does it restrict your movement at all?

13 A. No.

14 Q. And does it prevent you from performing any  
15 physical tasks?

16 A. Again, with the medication, I'm limited  
17 to --

18 Q. Is that because of side effects of the  
19 medication?

20 A. Right.

21 Q. Does the manic depression, bipolar disorder  
22 affect your senses in any way, your ability to see,  
23 hear, taste?

24 A. Just your eyesight.

1 Q. It does affect your eyesight?

2 A. (Indicates affirmatively).

3 Q. How does it affect your eyesight?

4 A. When you're taking it, you get blurred  
5 vision with it.

6 Q. Again, are we talking side effects of the  
7 medications that you take?

8 A. Right.

9 Q. Does the bipolar disorder, manic depression  
10 affect your ability to communicate in any way?

11 A. Meaning?

12 Q. Your ability to speak.

13 A. No.

14 Q. Does the manic depression or bipolar  
15 disorder affect your ability to reproduce or have  
16 children?

17 A. No.

18 Q. Now, a moment ago you mentioned that the  
19 bipolar disorder, manic depression affects your  
20 ability to have a life and affects your marriage.  
21 Can you tell me what you mean by that?

22 A. My wife feels like she walks on eggshells.

23 Q. Do I understand you have been married what,  
24 is it about 18 years or so?

1 A. Right.

2 Q. And you have one child?

3 A. Right.

4 Q. Does the manic depression, bipolar disorder  
5 affect your life in any other way, other than what  
6 we have spoken about so far this morning?

7 A. No.

8 Q. One question I didn't ask you with respect  
9 to healthcare treatment. You mentioned marriage  
10 counseling. Have you ever received any mental  
11 health treatment with other members of your family,  
12 other than the marriage counseling?

13 A. Just with my wife and myself.

14 Q. Which you identified for those periods of  
15 marriage counseling?

16 A. Right.

17 Q. You have never received any other family  
18 type of therapy or counseling?

19 A. Not that I can recall.

20 Q. Have you ever referred any patients to Anne  
21 Kronenberg, any friends or family members?

22 A. No.

23 Q. Have you ever referred anyone to the Bethel  
24 Medical Group?

1 A. I don't recall.

2 Q. Did you ever tell Christy's of Cape Cod that  
3 you suffered from manic depression, bipolar  
4 disorder?

5 A. I don't recall.

6 Q. Did you ever tell Pat McKeown that you  
7 suffered from bipolar disorder, manic depression?

8 A. I don't recall.

9 Q. Did you ever tell Christy's of Cape Cod that  
10 you suffered from panic attacks or any of the  
11 symptoms that you identified this morning?

12 A. I don't recall.

13 Q. Did you ever tell Pat McKeown that you  
14 suffered from panic attacks or any of the symptoms  
15 you have identified this morning?

16 A. I don't recall.

17 MR. SCOTT: Just to be clear for the record,  
18 Tom, are you asking him if he personally informed  
19 anyone directly?

20 MR. COLOMB: That is the question --

21 MR. SCOTT: Okay.

22 MR. COLOMB: -- we have asked so far, yes.

23 MR. SCOTT: Okay.

24 MR. COLOMB: Okay.

1 BY MR. COLOMB:

2 Q. Before February of 2002, did you ever  
3 provide any documentation to Christy's of Cape Cod  
4 about any mental health conditions?

5 A. Well, are you looking for a specific date,  
6 or --

7 Q. I am asking ever before February of 2002.

8 A. I don't recall.

9 Q. Okay.

10 A. Yeah.

11 Q. Before your first meeting with Pat McKeown  
12 in which he indicated concerns about counting issues  
13 at the stores, --

14 A. Uh-huh. (Indicates affirmatively).

15 Q. -- did you ever provide any documentation to  
16 Christy's of Cape Cod relating to any mental health  
17 conditions or treatment?

18 A. I don't recall.

19 Q. Prior to February of 2002, did you ever  
20 provide any documentation of mental health  
21 conditions or treatment to Pat McKeown?

22 A. I don't recall.

23 Q. Prior to your meeting with Pat McKeown in  
24 February of 2002 where he brought forward concerns



1 of accounting issues in the stores, did you ever  
2 provide any documentation to Pat concerning mental  
3 health treatment or any mental health conditions?

4 A. I don't recall.

5 Q. Did you ever discuss any mental health  
6 treatment or mental health conditions with Pat prior  
7 to that meeting?

8 A. I don't recall.

9 Q. Is there any reason why you believe that  
10 Christy's of Cape Cod was aware of any mental health  
11 condition that you suffered from or any mental  
12 health treatment that you were receiving before  
13 February of 2002?

14 A. Do the question again.

15 Q. Is there any reason why you believe that  
16 Christy's of Cape Cod was aware of any mental health  
17 condition or mental health treatment that you were  
18 receiving before February of 2002?

19 A. I took time off to go to the doctors.

20 Q. When was this?

21 A. Since 2000.

22 Q. How much time did you take?

23 A. My appointment was at 3:00, take a couple  
24 hours.

1 Q. How often were these appointments?

2 A. Like I said, every three weeks to four  
3 weeks.

4 Q. So every three to four weeks, you took a  
5 couple of hours for a doctor's appointment?

6 A. To go to a doctor's appointment.

7 Q. And who, if anyone, did you tell that you  
8 were going for these doctor's appointments?

9 A. That would be Jean, the office manager at  
10 the time.

11 Q. What is Jean's last name?

12 A. McPherson. I don't know what it is now.

13 Q. What did you tell Jean?

14 A. Just said I was going to a doctor's  
15 appointment.

16 Q. Did you say anything else to Jean?

17 A. Pretty much she asked me if everything was  
18 all right. I just said it was counseling.

19 Q. Did you say anything else to Jean about  
20 these appointments?

21 A. Not that I recall.

22 Q. Did you provide any documentation to Jean  
23 about these appointments?

24 A. Didn't know I had to.

1 Q. I am not saying you did. I am asking if you  
2 provided any documentation to --

3 A. No.

4 Q. -- Jean? Did you ever discuss these  
5 appointments with Pat McKeown?

6 A. No.

7 Q. Did you ever discuss these appointments with  
8 anybody else at Christy's, other than Jean?

9 A. I don't recall.

10 Q. Did you ever provide any documentation about  
11 these -- I'm sorry?

12 A. I did.

13 Q. I didn't mean to cut you off.

14 A. I did.

15 Q. All right.

16 A. It was Rich Brice.

17 Q. You spoke to Rich Brice?

18 A. Yeah.

19 Q. And when was this?

20 A. I don't know the exact dates.

21 Q. How many times did you speak to Rich Brice  
22 about your appointments?

23 A. A couple times.

24 Q. Who is Rich Brice?

1 A. He used to be their comptroller.

2 Q. And why were you talking to Rich Brice about  
3 your appointments?

4 A. Just he asked me where I was.

5 Q. How many times did that happen, that he  
6 asked where you were?

7 A. I don't remember how many times.

8 Q. Was it more than once?

9 A. It was a couple of times.

10 Q. Do you recall what he asked you?

11 A. Didn't ask me about it, just asked me where  
12 I was going.

13 Q. Were you at the office location for  
14 Christy's when these conversations took place?

15 A. Yeah.

16 Q. And when Rich asked you where you were  
17 going, how did you respond to the question?

18 A. Told him I had to go to the cuckoo doctor.

19 Q. Is that the exact word that you used?

20 A. Yeah.

21 Q. Why did you say that?

22 A. I don't know, just out of embarrassment.

23 Q. Why did you feel the need to identify what  
24 kind of a doctor you were going to?

1 A. At the time I didn't think it made a  
2 difference.

3 Q. Did Rich ask you what kind of a doctor you  
4 were going to?

5 A. I don't recall.

6 Q. Was Rich your supervisor?

7 A. No.

8 Q. Was Rich your friend?

9 A. Yeah.

10 Q. So did you volunteer to Rich that you were  
11 going to the cuckoo doctor?

12 A. No, it was just a conversation.

13 Q. Now, other than the conversation with Rich  
14 and telling Jean, the office manager that you were  
15 going to doctor's appointments, do you have any  
16 other reason to believe that Christy's knew  
17 anything about your bipolar disorder, manic  
18 depression?

19 MR. SCOTT: Objection, asked before.

20 BY MR. COLOMB:

21 Q. Do you have any reason to believe that  
22 Christy's of Cape Cod knew anything about your  
23 mental health conditions?

24 MR. SCOTT: When?

1 BY MR. COLOMB:

2 Q. During the course of your employment at any  
3 time.

4 A. I don't know.

5 Q. Did you have conversations about your mental  
6 health condition with anyone at Christy's of Cape  
7 Cod at any time?

8 A. I don't --

9 MR. SCOTT: Other than the things he has  
10 already testified to?

11 MR. COLOMB: I suppose we could agree to  
12 disagree whether those discussions with Jean or Rich  
13 constitute a discussion of --

14 MR. SCOTT: We don't have --

15 MR. COLOMB: -- mental health conditions.

16 MR. SCOTT: We don't have to characterize  
17 them, --

18 MR. COLOMB: Yes.

19 MR. SCOTT: -- but do --

20 MR. COLOMB: Other than the discussions with  
21 Jean or with Rich.

22 MR. SCOTT: Okay.

23 BY MR. COLOMB:

24 Q. Did you have any conversations with anybody

1 else at Christy's of Cape Cod --

2 A. I don't recall.

3 Q. -- about --

4 A. Sorry.

5 Q. -- anything related to your mental health  
6 conditions?

7 A. I don't recall.

8 Q. Did you ever have any conversations with  
9 anybody other than Jean or Rich about the fact that  
10 you were going for doctor's appointments?

11 A. I don't recall.

12 (Discussion off the record.)

13 MR. COLOMB: Maybe we could just agree to  
14 agree, but I have my copy. It is unmarked other  
15 than the number on it. I wanted to show the witness  
16 Exhibit No. 7.

17 BY MR. COLOMB:

18 Q. I would just ask you if you would take a  
19 look at that?

20 (Discussion off the record.)

21 BY MR. COLOMB:

22 Q. Mr. Whalon, I have shown you what has been  
23 marked already in this deposition as Exhibit No. 7.  
24 Do you recognize it?

1 A. Yes.

2 Q. What do you recognize it to be?

3 A. Doctor's note.

4 Q. And who is the note from?

5 A. Dr. Geoffrey Gilson.

6 Q. What is the date on the note?

7 A. The 27th.

8 Q. Of what month?

9 A. February.

10 Q. And what year?

11 A. '02.

12 Q. Did Dr. Gilson provide you with this note?

13 A. Yes.

14 Q. And do you know when he provided you with  
15 this note?

16 A. Must be on the 27th. It's what he's got  
17 written here.

18 Q. Do you have any reason to doubt that it  
19 wasn't provided at the time or the day it is dated?

20 A. It was before that. I'm not sure of the  
21 exact date.

22 Q. You think it was before that?

23 A. Right.

24 Q. In other words, you think Dr. Gilson



1 provided you with this note before February 27th of  
2 2002?

3 A. I don't recall. I'd have to look at the  
4 thing.

5 Q. You would have to look at what thing?

6 A. If you have his folder, I could look and see  
7 the day I was in there.

8 Q. Did Dr. Gilson provide this to you during an  
9 office visit?

10 A. I believe so.

11 Q. Did you do anything with this note?

12 A. Yes.

13 Q. What did you do with the note?

14 A. FAXed it to their office, Christy's.

15 Q. Do you know when you FAXed the note to the  
16 Christy's office?

17 THE WITNESS: Do you have that?

18 THE REPORTER: I'm sorry?

19 BY MR. COLOMB:

20 Q. We don't need to look at -- I mean, just as  
21 you sit here, do you know?

22 A. You want an exact date, and you can see the  
23 date.

24 Q. I am not looking for an exact date. I am

1 asking for --

2 A. Okay.

3 Q. -- your recollection. If you don't recall,

4 A. You're asking --

5 Q. That is fine.

6 A. -- for an exact date.

7 Q. Prior to FAXing this letter to Christy's,  
8 had you ever before provided a note to Christy's  
9 concerning anxiety or chest pain?

10 A. I don't recall.

11 Q. Prior to furnishing this note to Christy's,  
12 had you ever provided them with any other note from  
13 a physician or any healthcare provider relating to  
14 mental health treatment?

15 A. I don't recall.

16 Q. Prior to providing Christy's with this note,  
17 did you ever provide Christy's with any other notes  
18 from any healthcare providers on any topic?

19 A. Before this note?

20 Q. Before this note.

21 A. I don't recall.

22 THE WITNESS: Do you have the paper?

23 MR. COLOMB: Do you want to take a break for  
24 a moment, go off the record?

1 MR. SCOTT: Do you need a break?

2 THE WITNESS: No, I just want to know what's  
3 in there.

4 MR. COLOMB: I got a sense he wanted to  
5 speak to you. So if you want to --

6 MR. SCOTT: Well, you are --

7 MR. COLOMB: -- just take a moment, that is  
8 fine.

9 MR. SCOTT: -- here to answer his questions.

10 THE WITNESS: Right.

11 MR. SCOTT: And to talk about documents that  
12 he shows you.

13 THE WITNESS: Well, I just didn't know what  
14 was in there, so I wanted to know what --

15 MR. SCOTT: In where?

16 THE WITNESS: That's my file.

17 MR. SCOTT: You don't need to concern  
18 yourself with --

19 THE WITNESS: Okay.

20 MR. SCOTT: -- your file at the moment.

21 THE WITNESS: All right.

22 MR. COLOMB: Actually, after all that, now I  
23 am going to ask for just a minute.

24 MR. SCOTT: You can certainly indicate in

1           answering his questions that a document might exist  
2           that would help you to answer it, and then it would  
3           be his option --

4                     THE WITNESS:   Yeah.

5                     MR. SCOTT:   -- to go into that document.  
6           But unless you indicate that, and he opts to show  
7           you other documents, you have to answer the  
8           questions based on just the document that is just  
9           before you.

10                    MR. COLOMB:   All right.   John, why don't we  
11           go off the record for just a second?

12                    (Brief recess.)

13                    BY MR. COLOMB:

14           Q.           If you are all set, Mr. Whalon, --

15           A.           Okay.

16           Q.           -- we will go back on.   Mr. Whalon, just  
17           directing your attention to that Exhibit No. 7,  
18           which is the doctor's note dated 2/27/2002, prior to  
19           providing this document -- strike that.

20                    Directing your attention to Exhibit No. 7,  
21           which is the doctor's note dated February 27, 2002,  
22           do you recall how you provided that to Christy's of  
23           Cape Cod?

24           A.           It was FAXed.

1 Q. And did you FAX it personally?

2 A. FAXed it from Staples.

3 Q. But you personally --

4 A. Right.

5 Q. -- did this?

6 A. Yes.

7 Q. Did you fill out a FAX cover sheet, if you  
8 recall?

9 A. I did.

10 Q. Did you direct the FAX to anyone's attention  
11 at Christy's?

12 A. I believe it was attention Patrick or Jean.  
13 I'm not for sure of the exact person.

14 Q. You had a meeting with Mr. McKeown on  
15 February 27th; is that right?

16 A. No.

17 Q. That is not correct. Do you recall when was  
18 the meeting that you had with Mr. McKeown where he  
19 first raised with you the issues of what he was  
20 terming discrepancies in the store?

21 A. On the 22nd.

22 Q. That meeting was on the 22nd of February?

23 A. I believe.

24 Q. Prior to that meeting, had you ever told Mr.

1           McKeown, that you suffered from bipolar disorder,  
2           manic depression, or any other conditions?

3           A.           I don't recall.

4           Q.           During that meeting which you are indicating  
5           about was on the 22nd of February, did you indicate  
6           to Mr. McKeown at that time that you suffered from  
7           manic depression, bipolar disorder, or any other  
8           mental health condition?

9           A.           I don't recall.

10          Q.           Do you recall if that topic came up at all  
11          during that meeting?

12          A.           I don't recall.

13          Q.           Was it after that meeting that you went to  
14          Dr. Gilson for the visit which resulted in that note  
15          that has been marked as Exhibit 7?

16          A.           I believe.

17          Q.           So that note, you did not have that note in  
18          your possession at the time of the meeting with Mr.  
19          McKeown?

20          A.           No.

21          Q.           Why did you go to Dr. Gilson for the visit  
22          that resulted in that note?

23          A.           For chest pains and anxiety.

24          Q.           When did those chest pains and anxiety set

1 in, that episode of chest pains and anxiety?

2 A. I had had them previous.

3 Q. When you went to the physician for chest  
4 pains or anxiety, was that an acute event, or were  
5 you simply saying to the physician, "I've had some  
6 chest pains and anxiety"?

7 A. I was having chest pains and anxiety.

8 Q. At the time you went to see the physician?

9 A. Even before that.

10 Q. Were you also having them at the time you  
11 went to see the physician?

12 A. Yes.

13 Q. And as a result of seeing Dr. Gilson, did he  
14 then create the note that has been marked as Exhibit  
15 No. 7?

16 A. I believe.

17 Q. And then after he created that note, you  
18 then provided it via facsimile to Pat McKeown?

19 A. Right.

20 Q. Do you remember if you provided any other  
21 medical notes to Pat McKeown before that one?

22 A. I don't recall.

23 Q. Is there anything that would refresh your  
24 recollection as to whether you provided any other

1 earlier notes to Patrick McKeown?

2 A. Meaning?

3 Q. Is there anything you can do, any document  
4 you can look at, any people you could speak with?  
5 Is there anything that you could do to help you  
6 answer that question in a yes or no fashion?

7 A. Yes.

8 Q. What could you do that would help you to  
9 recall if you had provided earlier medical notes to  
10 Pat McKeown?

11 A. Oh, that I can't, no.

12 Q. Did you ever create yourself any document,  
13 meaning a letter, a note, any document of any kind  
14 that you provided to Christy's before your  
15 February 2002 meeting with Pat McKeown in which you  
16 indicated that you suffered from manic depression,  
17 bipolar disorder, or any other mental health  
18 condition?

19 A. I don't recall.

20 Q. Did you ever ask a physician or a healthcare  
21 provider to create such a document for you?

22 A. I don't recall.

23 Q. Up until this meeting with Patrick McKeown  
24 which you have identified as the 22nd of February,



1           2002, I am not sure if the date is correct on that,  
2           but you understand the meeting we are talking about  
3           where Pat McKeown first identified concerns about  
4           irregularities at the store? During the course of  
5           your employment at Christy's up to that point, had  
6           you ever discussed bipolar disorder or manic  
7           depression with anybody who also were any fellow  
8           employee of Christy's, other than what you mentioned  
9           a moment ago of Rich Brice and Jean?

10          A.           No.

11          Q.           Did you ever discuss bipolar disorder, manic  
12           depression, any substance abuse issues with Dori  
13           Caussey?

14          A.           I don't recall.

15          Q.           Did Dori Caussey ever raise the issue of  
16           her suffering from any mental health issues with  
17           you?

18          A.           I don't recall.

19          Q.           Have you ever been treated for substance  
20           abuse?

21          A.           No.

22          Q.           Have you ever been treated for alcoholism?

23          A.           No.

24                   MR. COLOMB: Maybe we could just go off the

1 Q. Why did you call Patrick to tell him that  
2 the doctor's note was coming?

3 A. Just to let him know that a doctor's note  
4 was coming.

5 Q. Did you indicate anything about what the  
6 doctor's note said?

7 A. Don't recall.

8 Q. Did you have any discussion with Patrick  
9 during that phone conversation about any medical  
10 condition whatsoever?

11 A. Other than what the doctor's note said.

12 Q. Well, that is actually what I am asking.  
13 Did you --

14 A. Okay.

15 Q. -- discuss with him what the doctor's note  
16 said?

17 A. Anxiety or -- and chest pains.

18 Q. Right, that is what the note says. But did  
19 you actually discuss that with Patrick --

20 A. I believe --

21 Q. -- verbally?

22 A. -- I did.

23 Q. Does the existence of this phone  
24 conversation help you to remember if you at any time

1 before this phone call had ever told Patrick that  
2 you suffered from any condition, such as bipolar  
3 disorder or manic depression?

4 A. Say it again.

5 Q. The fact that we are now discussing this  
6 phone call, does that help you to recall if on any  
7 prior times you had told Patrick about any mental  
8 health conditions?

9 A. I don't believe other than this note here.  
10 (Witness indicating.)

11 Q. You don't believe other than the note what?

12 A. I don't recall it.

13 Q. Did Patrick say anything to you during this  
14 phone conversation?

15 A. I don't recall.

16 Q. Specifically, do you recall any discussion  
17 about the doctor's note or any medical condition?

18 A. I don't recall.

19 Q. Do you know how soon after you received  
20 that note from Dr. Gilson that you phoned Pat  
21 McKeown?

22 A. I don't recall the exact time.

23 Q. Do you know if it was the same day?

24 A. I don't recall.